

INTERVIEWEE: DONALD M. BAKER (Tape #1)

INTERVIEWER: STEPHEN GOODELL

February 24, 1969

G: This is an interview with Mr. Donald M. Baker, the general counsel in the Office of Economic Opportunity. Today's date is February 24, 1969. Mr. Baker, as I understand, you're a native of Beckley, West Virginia, but your schooling was done in Monroe, Michigan, and you attended the University of Michigan where you received a B.A., an M.A., and an LL.B. You're a member of the Michigan Bar Association, and you were admitted to the practice before the Supreme Court. Formerly you were a counsel to the labor subcommittee on the Senate Committee on Labor and Public Welfare, and you were the counsel for the Senate select committee or subcommittee on poverty, which reviewed the Economic Opportunity Act of 1964.

In November 1964, you were made general counsel to OEO. Mr. Baker, how did you first come into contact with economic opportunity legislation? Before the subcommittee?

B: Yes. Actually, before the subcommittee had come into being, legislation was sent up and I was familiar with it. Lister Hill, as I recall, chairman of the committee--the Labor and Public Welfare Committee of the Senate--declined to sponsor the legislation or to be responsible for it. Senator Pat McNamara therefore, the next ranking member of the committee, was chosen as the chairman of a select subcommittee which was in fact all members of the full committee other than the chairman, who, again, did not participate. I was Senator McNamara's man on the committee, and therefore more or less routinely became his counsel for the select subcommittee on poverty.

G: When you say you were his man, does that mean that you were his appointee?

B: Yes, I was his appointee in my position of counsel to the labor subcommittee of which he was the chairman.

G: Could you date that information?

B: That was a matter of a very short time after the legislation came up, which was in March or April, it would have been formed.

G: You were aware of the activities of the task force--the early task force in February-March of 1964?

B: Yes, to the degree that it was in the newspapers I was aware of what was going on.

G: But you had no other contact?

B: I had no other contact, no.

G: What were, if you can recall, your impressions of the bill at that time?

B: Well, as the bill first came up it was obviously put together of a conglomerate, of a number of pieces, of legislation that had been discussed and/or considered by Senate committees. And in the case of the Job Corps and the Neighborhood Youth Corps, it actually passed the Senate and got through the House Committee a couple of times. S-1, I think, was the designation. The Vista program, obviously, was a modification of the National Service Corps Program, and some of the other things had been, I don't recall right offhand, had been discussed earlier. The Community Action was the newest. It bore obviously some imprint from the juvenile delinquency program which contributed both to some of its strengths and some of its weaknesses as far as legislation was concerned. I must confess at

that time my impression was that the legislation was going to be very difficult to get passed. I think, as a matter of fact, it turned out to be easier than I had anticipated.

G: Was that from the point of view of the Senate--

B: No, I thought the chief problems would be in the House. The Senate has in recent years consistently been more liberal, if that's the correct word, than the House in passing welfare legislation of this kind, and I did not really anticipate any serious problems in the Senate. But just as S-1 and the national service corps and other programs had been held up or failed the passage in the House, I thought this one similarly would have difficulty.

G: Can you recall any specific objections to the bill that might have been brought up before the Senate subcommittee? Were there any radical changes that were imposed or things of this sort?

B: There were no radical changes in the Senate. Actually what we tried to do there, as I recall, was basically take the House bill, as the easiest way of handling the thing from a tactical point of view, we basically took the House bill and tried to operate with it. We had relatively brief hearings, Senator McNamara was always unenthusiastic about hearings, didn't think they accomplished a great deal except to give the enemies of a piece of legislation a forum. So we more or less adopted the hearings of the House committee in bloc as part of our own hearings and went forward with the House legislation.

Probably the major thing that occurred in the Senate side during the committee deliberations was the adoption of the migrant worker provisions--the housing, education, sanitation, day-care operations--

which of course were based on legislation that had passed the Senate from Senator Harrison Williams' subcommittee on migratory labor. There had been housing, day-care, sanitation, and education programs for migrants which had passed the Senate separately and got stalled over in the House. When the Poverty Bill was before the committee, these were sort of pressed together into one lump package and attached to it. I think that's probably the major thing that occurred.

G: When I asked about your impressions of the bill and you pointed out its similarity to previous measures which either had passed the Senate and not passed the House or had been stymied for one reason or another in the Congress, one of the criticisms that has been made of the initial legislation was that it was hastily conceived and that there was inadequate planning in putting together the programs. Would you agree with that? What would your comment be to that kind of a statement?

B: I don't think that's true so far as the Congress is concerned. I don't know how fast the task force really worked, or under what pressures they worked--I wasn't there really--but the fact of the matter is there have been very substantial amount of hearings. And if you go back and read the Senate report which I wrote at that time, I documented the amount of hearings that had been held on all these various pieces of legislation in times past, and it amounted to a good many feet of printed hearings, and I mean literally a good many. I would guess that somewhere between seven to ten feet in hearings could be put together if the hearing records were stacked over the years on these various measures. And in that sense if you assume--you know I'm somewhat with Senator McNamara in my

evaluation of how important or how good the hearing process is-- but if you assume that the hearing process is worth anything at all, this is legislation that was given an exhaustive study.

G: Of contemporary interest and in line with this questioning is Mr. Moynihan's book on maximum feasible misunderstanding, and I think one of his statements in the book, which I have just been reading recently so I may be misquoting him, of supreme importance at the time it was being reviewed before the Congress was the fact that the President, Mr. Johnson, wanted that bill very, very desperately, so that there were certain political considerations either on the part of the people who were responsible for that bill going through. Did you as counsel for the subcommittee see any evidence of political lobbying, political pressures, to get the bill through?

B: Well, obviously the administration was interested in getting the poverty legislation through the Congress. This was evident in a number of points. The fact of the matter is a great number of administration people worked on the Hill. Many of them went up and testified. The attorney general, Robert Kennedy, was up there, and the secretary of labor and HEW and agriculture; and in addition to being up there testifying directly, they made phone calls. And their staff, assistant secretaries, undersecretaries, congressional relations people, all of them were up there working. It was a pretty effective team effort, by and large, as far as administration efforts go in the direct sense.

Then of course Sarge Shriver was one of the most vigorous and hard working legislative lobbyists that has ever come down the pike. He was up there visiting members of the House and Senate, and it didn't

make an awful lot of difference what a member's views were--he spent as much time with the Neanderthals and the dinosaurs as he did with the liberals, and he was courting them all. He worked this legislation just like he had always worked the Peace Corps legislation, and he had a number of people who were working very hard with him. It was a big effort. It was obvious that they wanted to get it passed.

G: Who, from the White House staff, do you recall would have been responsible for the bill? Was Larry O'Brien at all?

B: I don't recall specifically offhand. I would guess that he would be, and Henry Hall Wilson, and all the rest of them. I remember, for instance, I guess that was in '65, Mike Manatos was very active on the Senate side. But there would have been very little reason for me to come into contact with those guys, normally, the way things developed, so I don't really have any specific memories as to exactly their role at that time. The White House people played a more direct role I think, or at least to me a more observable role, in 1965 and '66 than they did that year.

G: Part of the reasoning for why I'm asking you this is that you mentioned a little earlier that it was your impression that possibly the bill might have some rough going, but as it turned out it didn't.

B: It wasn't as tough as I had thought.

G: And I had thought that perhaps--

B: Well, it was not as close for instance--I think one of the things that might be observed is that I think there was a great deal more nervousness about its passing in the House than, from the benefit of hindsight, needed to have existed. I think, for instance, if we'd known what the votes were going to be, the White House and

Mr. Shriver might have told the South Carolina delegation to go jump in the lake on the Yarmolinsky affair.

G: I'm not sure whether the rules of evidence are to be strictly followed in a tape such as this--that is, if you don't have any specific or personal part of the incident--but do you recall what the story was on that Yarmolinsky affair?

B: Well, I was told the story. I read all the stories, but I was told the story by a member of the Congress, who happens to be a personal friend of mine, who was present in the Speaker's office when this matter came up and was resolved. It was considerably different than has appeared in print. The way I understood, Mendel Rivers, either through his antipathy to Yarmolinsky because of his association with McNamara, or because of some alleged personal affront, or because he was a Jew, or because he was a liberal, or for whatever reason he had, mobilized the South Carolina delegation and some of the North Carolina delegation to threaten that they would not support this legislation and, in fact, would oppose it unless they were assured that Yarmolinsky was not going to be the deputy director. This ultimatum was presented to Mr. Shriver in Speaker McCormack's office. As I understand it, he said he could not make this kind of commitment. He went to the phone and called the White House--my informant told me that it was his impression that he had spoken to the President. He came back and said, not that he was committed, not that Yarmolinsky would not be the deputy, but that his commitment was that he, Shriver, was permitted to say that he would not recommend Yarmolinsky to the President to be deputy. It was that fairly limited commitment that was made.

Subsequently, in the course of the debate on the floor of the House in response to a question raised by someone--I believe it was some Republican--Phil Landrum alleged that it was his understanding from, as I recall he said, "the highest possible source," that Yarmolinsky was going to have no part of this operation, which was a distinct enlargement upon the original commitment as I understood it. I think, as a matter of fact, that it might be observed that that probably was the most unfortunate thing that ever happened to the poverty program; that single occurrence probably did us more harm than anything else that ever happened.

G: In what respect?

B: My impression was that--well, I have a tremendous respect for Yarmolinsky and his abilities, and his innate good judgment, and his brains, and his capacity to administer. He and Sarge Shriver obviously had a very good working relationship. Sarge was the outside and Yarmolinsky was the inside guy. Yarmolinsky ran a very taut ship, and he made most of the inside decisions and he stopped most of them at his level. Sarge was free to go ahead and deal with the legislature and the outside groups and whatnot, and Adam did the housekeeping for him.

As it happens, after bill was passed, he left. Sarge was without a deputy and, for reasons I've never quite understood, continued to try to run the Peace Corps and this place too. There was no Number Two man. Finally, after months went by, he elevated Jack Conway to the position of Number Two. This was after there had been an awful lot of shots taken at the program and at Sarge. I think he personally had gotten himself very much over-fatigued and overworked. And he appeared

to lack the confidence in Conway that he had in Yarmolinsky, but in any event they did not work as well together as I think Yarmolinsky and Sarge would have. And for practical purposes, even after Jack got in here and after he left, Sarge never had a deputy. He never quite got to the position again where he could identify with his deputy as his alter ego. He just never did it in the history of the agency after Yarmolinsky left. And, as I say, I think a lot of the problems that subsequently came up would have been resolved much more quickly and much more certainly than in point of fact occurred. The difference in view for instance, if you will, the conflict between the concept of what community action was all about--whether it was a coordinative, innovative, program-related effort as against an effort designed to organize the poor, and to whatever degree you want to charge it with responsibility for bringing on conflict in change or confrontation, those two polar positions--I think the agency would have arrived at some compromise or some decision as to where it was going in that area, and we would have operated on that thesis. As it was, I think--

G: Under Yarmolinsky?

B: Yes. If he'd been here. As it was I think we sort of vacillated on a case-by-case basis. I don't blame Sarge for this. He was immensely put upon. The critics from the outside and the inside and the disloyalty in some respects--I considered it such--the leaks from the inside that were making life difficult for him, the attacks from the Hill, from areas in the administration, and from newspapers and whatnot just kept him so busy he really couldn't possibly keep up with what was going on. And I really think if Yarmolinsky had

been here, it would have been a much better program.

G: Are you suggesting that there was some sort of a communication breakdown between the President, Shriver, and Phil Landrum? Or, is there something more to it?

B: I really don't have any way of knowing how that occurred except that I am confident that the person that confided this--in the view that I gave on the matter--to is an objective and honest reporter of the facts as he perceived them. Whether there was a later communication with Phil Landrum, I don't know. But the fact of the matter is once he had made that statement, even though he was in McCormack's office when the other events took place--. Now if he in fact misunderstood, it really didn't make a lot of difference at that point because he was the sponsor of the legislation in the House, and the agency was in no position--nor was the White House, in fact--to make a liar out of him. So it really didn't matter whether he misunderstood or whether he was informed. The fact of the matter is once that statement had been made on the floor of the House, the matter was accomplished.

G: And I can add to that, once the statement was made, it had the effect of putting Shriver on the spot.

B: That's right. Sarge was very severely criticized for the whole affair and I think unfairly, as I view it. I think within this agency in matters of that kind I was as close to Sarge, or came to be as close, as anybody on the real tough issues. And one of the things that was always remarkable to me is that in this sort of thing in which the White House was involved, he never complained; you know, whatever the press was saying, he never said, "The White House told me to do

this, or somebody told me to do that." He always took the responsibility and like a good loyal soldier he kept his mouth shut, even to those of us who was very close to him.

G: How then did you become involved in the program? The bill was passed in, I think, August 1964, and you came to OEO in November. Is that right?

B: Actually, I came to OEO within a matter of a week or less after the bill had passed the House and Senate. I committed myself to come before the bill signing ceremony. It was shortly after the bill was passed. I was called one morning about 11:00 o'clock by Sarge to come over and have lunch with him, him and Yarmolinsky and Conway at the Lafayette Hotel. He asked me if I could come to lunch. I was completely unshaven and running around the house in a pair of blue jeans.

G: Excuse me. Did you know Shriver before this?

B: Well, I had met him in connection with the bill passage. Let me preface all this by saying that throughout the course of the legislation there were a good many conferences with task force staff. I had a meeting, for instance, with Yarmolinsky and others in Bob Perrin's office, who was then with Senator McNamara, and I had a running series of meetings with various members of the task force-- Steve Pollak, who later became my deputy, and Ann something-or-other from the Bureau of the Budget, and Chris Weeks.

G: Ann Oppenheimer?

B: Ann Oppenheimer, yes, and Chris Weeks and others of the task force. We had various meetings from time to time and I suggested changes in ways of handling things, and of course called upon them for

reports and information and interpretations and for draft committee language on various and sundry things. We were in consultation regularly on meeting of the strategic and the tactical legislative problems during that time. Of course I met Sarge from time to time, and of course I had known Jack Conway from my Michigan days. I think I first met Jack at his house, probably it was 1960. I think he and his wife gave a fund-raiser for Jim O'Hara, Congressman O'Hara, for whom I worked when I first came to Washington.

Anyway, we met at the Lafayette Hotel, the four of us, and Sarge offered me a position. As a matter of fact, he offered me three positions. He was offering me general counsel, interagency affairs, or congressional relations. I chose the general counsel's position because I wanted to preserve my professional standing and status. He offered the job then and he told me he wanted a decision--I think it was by the next day, the next evening or something or other--because he thought the President wanted to announce some names when he signed the bill. It turns out it didn't happen that way. But in any event I talked to Pat about it--that is, Pat McNamara--and he urged me to go ahead and thought it was a good thing for me and for the agency, he said, and so I came down here. Actually I came down here and went to work over in the old hospital building, where they were housed before we went into the new Colonial Hotel. I was still on the Senate payroll. With benefit of hindsight, I would have been better advised to take a vacation because the fact of the matter is I didn't get any for the next three years. And as a matter of fact before that winter was over, I had had pneumonia twice from working to two or three o'clock in the mornings, six or

seven days a week.

G: Did you know what you were getting into when you accepted this job?

B: No, I really never did. When I was offered the job, I told my wife, "Are you willing to say goodbye to me for a year." I knew it was going to be a tough job, but I did not realize the amount of time and effort that was going to be required and the really very serious and difficult problems we were going to have.

G: I asked you earlier, in front of the committee what kinds of impressions you had of the bill. Can I ask you now what did you expect from the program. What were either your anticipations or apprehensions about the program, as you saw it then?

B: I anticipated much of the problems that the bill in fact precipitated for the agency. I perhaps only a little blindly anticipated one of the basic problems. I started out viewing community action from the "programmatic" prospective, not the "community organization" prospective. And even focusing on that I perceived that it was going to cause a great deal of difficulty trying to get institutions to change their way of doing business, and I knew that any agency that tried to do it was going to get into trouble. We were going to be a challenge and a threat to all on-going institutions, public and private, and that was going to cause us a fairly substantial amount of heat. As a matter of fact I told Pat McNamara once, I think after the first reading of the bill, "If the members read community action and understand what it means, it'll never get through." But they didn't, of course.

G: If I can interject a moment, it's my impression in going back over the legislation in '64, that very few people took any notice of it. In fact, the only person who really addressed herself to it was

Edith Green in the House, and I would agree with the sentiment you just expressed. I wonder if this is an unusual thing in Congress?

B: Well, I think there probably was more understanding on the part of some than is evidenced by the record. The fact of the matter is, you know, when you're talking about guys like Jim O'Hara, and Frank Thompson, Sam Gibbons, and some of those people, they can read and they can understand and they can perceive. The amount of diligent, hard scrutiny that goes into an individual bill on the part of individual senators is probably much less than it is in the House members, but there were House members who knew what was involved here, and there probably were some Senate members who were familiar with the juvenile delinquency program and what was going on, who sort of had an understanding. There was an understanding that something had to be done and this offered some promise. Obviously a lot of things had to be done and this offered some promise. Obviously a lot of things had not worked before and this sounded like a good idea. And they went for it.

The fact of the matter is you've got to remember that when this bill came up, most of the members in both those committees, had been people who had been fighting for social welfare type legislation virtually all the time they were in the Congress and running into stone walls. They had been running school construction and general aid bills up there; they had been running all manner of manpower programs and whatnot through the Congress, migratory worker bills only to have them die on one side or the other, or by Presidential veto or something in the last ten, twelve, fourteen, sixteen, eighteen years. And these were people who had for many years seen a

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great need for programs of this kind and they just fell in behind and supported it. Many of them probably did have more reservations than they gave voice to, at least on the official record.

G: I interrupted you before when you were talking about your initial interest and your initial activities when you first came over after--

B: Oh, well, it was a wild sort of operation in those early days, making the first grants. We didn't have any guidelines and didn't have the time really to draft them to start out. Many of the communities in anticipation of the passage of the act had been putting together applications; obviously the applications came in in a variety of forms. And what in effect happened was that we used those original guidelines, those original applications rather, as a means of learning little laboratory experiments in which we would study and decide what our policies were going to be.

G: Was this vis-a-vis community action and VISTA or--?

B: Community action primarily. For instance, in the area of one of our most acute and difficult problems early on was the church-state issue. The original poverty act that had gone up provided for education programs to be administered only through the public school systems. Some of the members that traditionally had been insisting upon services going to children in parochial and private schools also objected to that. And the way the compromise worked out, instead of the authority for the agency to grant in effect general aid to education to be run through the public school systems in the ghettos, an authority which probably was so broad that it meant that the federal government could virtually have hired the teachers and run the schools and dictated the curriculum, the compromise prohibited general aid to education but permitted what the act called "special, remedial

and non-curricular educational assistance." Thus it was conceived that directing the assistance to special children with special needs--who were the legitimate concern of the federal government--with special problems and providing only a limited kind of assistance for them, the federal government could aid the child wherever he was, and that we could and would be expected to make grants to parochial institutions where they were running programs for kids in need.

Well, what we did in that first batch of grants was to get some of the people that the mayors had appointed, some of the public school people, some of the parochial school people, some of the welfare agencies and other groups from each of the towns--there was Detroit, New Haven, Chicago, and Pittsburgh. We had them in here and we sat down for several days with each one, a couple days at least with each one, and we probed the geography of the city and the cultural breakdown of the city and what they proposed to do and how they proposed to do it. And out of their fact situations, and why they thought they wanted to go one way rather than another, we eventually came up with some ideas as to how we could structure this thing so that it would be least subject to attack in the courts, and most in keeping with what the Congress intended, and we came up with our church-state guidelines.

And that's what we did on many things. We would sit down in those early days, there would be program people who would sit down with one or more of my lawyers and some others, and they would go over the grants and the applications and discuss with the people what they wanted to do, and we gradually evolved what came to be a sort of a common law of decision--that the agency was going one

way rather than another in this particular area. We had some guidelines that would apply to education programs; then we began to have some ideas about preschool programs which we tried out a little bit; and then we gradually expanded upon into the Head Start thing and a wide variety of things. We began getting experience and our program people got experience.

Then gradually obviously, as the agency grew in size and the applications became something of a flood, it was impossible for a lawyer, for me or my deputy, or one of the other senior lawyers, to sit down [with the program people] or even to read every grant, although we started out that way. And what we did was, as more people came in, we began to write some of this stuff down, and then we developed the guidelines. What happened, as a practical matter, was we divided up into regions even though we were physically in the same building. One batch of people were going to handle the New York-New England region, and they were up on one section of a floor, and somebody else was some place else. And then eventually that became the cadre. But most of these people had gradually fallen into the system in which we developed what I call the common law of CAP operations.

G: The general counsel's office then was reviewing the Community Action Agency applications to the CAP office here, but you and your staff were reviewing them. Is that correct?

B: Obviously it was the initial and the primary responsibility of the program people to review the applications, but in the early days we more or less did it together until we developed some joint understandings as to what it was all about.

G: So you would have been working with Conway directly?

B: We were working with Conway, with Hays, with Bozman, Boone, and the various regional people who were around. We literally sometimes read applications over each other's shoulder--generally there was more than one copy. But we would meet with the people who came into town. There might be a team of people from Detroit, as there were, who came into town and we'd all sit around a table and discuss what some of their problems were and how we could mutually resolve them. The General Counsel's office never considered itself standing off from the program people. I decided early on that we were not going to issue a bunch of legal interpretations as separate memorandum, particularly since we wanted our program and the guidelines to be understood, or capable of being understood, by most people. What we would do would be to see that the legal input was put as much as possible into layman's terms into the guidelines, the requirements that were issued by the program people. So we've always been very close, much closer generally, I think, than most general counsels' offices were.

This caused some problems. Because, as a practical matter, what came about, Sarge and Conway and many others in the Congress were pressing the program people to get the money out and to go, go, go, and make the grants and make the contracts, and it became obvious after awhile that the only safety valve in the place was our office. What was happening otherwise down below in the program element was that people were looking at increasingly discrete and small elements of an application package. And it just happened that our office came to be the place where one, the only place in fact, where one

mature, rational, individual took a look at the total package. This caused some fury on our part and eventually we had to discipline the program people. But even it was left for us, for instance, to find arithmetic errors and budgeting errors and whatnot. In any event, we came to view ourselves as sort of the last protection, the ditch, for the director and, again, this caused some flap among some of the program people.

We made them defend their decisions. In the early days Sarge also took these packages after we had signed off on them or refused to sign off on them or something. They were simply taken en masse to Sarge who sat around with program people, and he explored and tested the decisions that were made. Well, we would feel perfectly free in challenging and making an educator justify a program that he was making, or a grant that he was proposing to make, even though there wasn't strictly a legal decision. People would say, "That's none of your business, it's not a legal issue." Our position was, more or less, "If it's a waste of taxpayers' money that's a legal issue." Or, "If it's bad judgment, we are not authorized by Congress to be using bad judgment with the taxpayers' money." And in effect we did stick our nose into a great number of areas.

G: So you were very, very much involved in the evolution of the policy rather than the construction of the guidelines.

B: Yes.

G: Did you find that there was a consensus of opinion about Community Action in terms of what it meant, what kind of an impact it would have, and so on?

B: Well, there was a consensus in a vague sense. There was always a

difference in view, and here again it varied. Sometimes within individual human beings their attitude varied over time and with respect to various grants. As to how important they viewed participation of the poor, for instance, as against program, purely program, most frequently I think we ran into this business in the early days in the South. My view, and I think the view of most of my lawyers and most program people, was you didn't start off with the most militant. You could expect most of the places in the South to get a couple of Negroes sitting down in the states of Alabama or Mississippi with the white establishment. That was something of an achievement and probably indeed was the maximum feasible at that particular time. And we viewed then the process of pleading and cajoling and threatening over time to get more representation as the way that you would have to go about it. There were a lot of people who placed more immediate emphasis on that and said we had to have it right now! There were some people around who no matter how many black faces were appearing on a Community Action Council's table in South Carolina or Mississippi, they always wanted one more, or two more, you know.

Other than that, I think there was a genuine consensus that there was a hell of a lot to do out there, and we wanted to get on with it. Probably one thing in which there was a fair amount of consensus is that our role was dealing with the poorest of the poor, and I think in some respects this is one of the problems that came to be and continues to be one of the worst problems that we have outside. For instance, Edith Green really, I think, is not interested in helping what she would consider the undeserving poor. In fact

what she means is the dirty, poorest of the poor. You know, she complains about Upward Bound, that the little girl with all A's can't get into Upward Bound. Well, the fact of the matter is Upward Bound was not designed for the kid with all A's; though she may be moderately poor, she's going to make it anyway. Our whole concept was that we're going to try to get down and get to the poorest of the poor and the hardest off of the hard-off. And this has got to cause us a lot of trouble. There was a fair amount of consensus in that.

G: What I was getting at is that earlier on this tape you mentioned that, at least while you were with the committee, you saw Community Action, indeed the whole poverty program, as one way of innovating institutional change. Of course this is a mixed bag, it seems to me; to some people institutional change can be evolutionary, a gradual process, and to other people it's the technique, the method, that you get that institutional change.

B: At that time I was thinking more in terms of institutional change in what I perceived was going to be necessary, for instance, to get the public schools to do what obviously they needed to do and still are not doing. And whether this was a bribe, a threat, or setting up competitive organizations, I knew that this was going to cause a lot of trouble. There are very strong political outfits, which through most of the history of this country have gone about insulating themselves from the normal political process and setting the system up to the point where they have the spring off-year elections to get themselves out of politics, they claim. The fact of the matter is they get themselves out of normal politics and into politics of

their own and where only 3 to 5 percent of the electorate nationally have anything to say about what they're doing, and the only people that vote are teachers and their relatives, and the relatives of the people on the school board, and a few middle-class people who are interested in education.

Well, the fact of the matter is that is probably the basic problem with American education today, particularly as it affects the poor. The fact of the matter is the school system in the average American city today has not been paying any attention to the poor and the kids in the ghetto for a good many years, and for very good reasons. For political reasons there's nobody who votes out of the ghetto in those off-year elections. So when you come along with programs to help education or help kids in school, the ghetto kids don't get their share and they haven't gotten their share; and trying to get the public school systems to give them their share causes problems. They complain. They write their senator, they write their members of Congress.

But to tell you what I'm talking about, I'm talking about things like the school lunch program and the school milk program. Now when we came into being, the city of Washington, D.C. was a classic example. You had literally hundreds of schools in and around Washington, that is, in Virginia and Maryland, which are filled with middle-class and upper-class kids who are fugitives from the city of Washington, fugitives from black faces, if you will. The fact of the matter is then, and to only a slightly lesser degree today, all of those school systems had school lunch and school milk programs, in which the federal government was subsidizing the feeding and

nutrition of the children, which is all well and good. But in the ghetto, inside the city of Washington, D.C., in the ghetto schools most particularly, there was nothing! And in every major city in this country today, or when we came into being, the fact of the matter is that was the situation that prevailed. The ghetto kids who were most in need got nothing, and the middle-class kids had it all, and the uppler-class kids. Now the facts varied. There was all manner of excuses and rationalizations. The most typical was that, "That school is already overcrowded, it's old, we don't want to put stoves in there, the wiring isn't safe to put stoves in, we can't put refrigerators, we don't have cafeterias, there's just no room," and all that jazz. "When we build a new school down there, then we'll put in kitchens and then we'll put in cafeterias." That'd been going on for years and years and years, and that's the way it is on everything. "We don't want to put books in the library down there because those kids are a bunch of ruffians, and besides we don't have the shelf space." It was happening in books, it was happening in teachers, it happened in space, it happened in desks, it was happening all the way across the board.

Well, one cannot anticipate that he is going to attack that system or criticize that system and not catch hell for it. Politically any man that raises his voice against the public school system in this country is going to catch a lot of hell. They've got a lot of forces working for them, and that was what I immediately perceived as the problem. And typically, this goes across the board, your other agencies that deal with the poor have carved out, generally in a less specific sense politically, but institutionally they have carved

out their own little area of expertise, and have worked out a relationship or a no-man's land, if you will, across which other agencies don't tread. The labor department with the employment service, learns over the years that it's much easier not to bother, and the welfare agency tacitly understands, and they don't bother the employment service. Mutually, they just sort of drop the poor between the slats between their two agencies, but they don't bother each other and they don't criticize each other. It's just the vast majority of the really hard-core poor--the nasty, the dirty, the unclean, the immoral, you know, the really very difficult children--somehow nobody ever gets to them. It's the deserving poor that ends up getting treated. This is institutionalized itself in many ways.

The Employment Service typically in the country before we came into existence and to a certain extent it's still true, it is still true, period, tends to have centralized locations downtown in the city, which are far removed from where the black faces are, or the Latin American faces, or the hillbilly faces--it doesn't matter what they are--they're just not close to where the Employment Services are. And moreover, it isn't only a physical problem--and it is a physical problem with people who can't read and don't know how to take buses to get there--in addition they are discouraged.

I remember when I was practicing law in Detroit and working out of a legal aid clinic connected with a church down in what we called Corktown in Detroit. I always urged my clients to keep going down to the Employment Service, just keep going in there, "drop in every day and see if you can't find a job." Well, it didn't take me very long to find out that these guys who dropped in every day

were told, "Now get the hell out of here, and I don't want to see you again for two weeks, or when your check is up so you have to come in and sign it. If you bother me again I'll see that you don't get another check!" That's the way it worked. They did not want to be bothered with them. The Employment Service is much more interested in talking over and becoming the substitute for college placement offices than they are with dealing with this kind of people. And it was that way across the board. I knew if you were going to try to bring about some changes, that was going to cause trouble. And if in fact that's all we'd tried to do and that's all anybody connected with the agency had tried to do, we still would have been in an awful lot of trouble.

The fact of the matter is I think that is the point where Edith Green really flipped her cork as far as we were concerned, when we absolutely insisted that the Portland school system feed the Head Start kids at least a cold meal--one cold meal a day--they didn't want to do that, with the understanding that next year it was going to be a hot meal. The fact of the matter is that's the big flap about transferring Head Start; that's the big pressure to get it in there. The educators do not want to have to feed those kids in large areas of the country. You can imagine the state of Tennessee, this is one of the big issues; they, the educators down there, do not want to have to be bothered providing meals to these poor kids, in spite of all we're reading and learning about nutrition and hungry kids. Tennessee is just one of many states in which the educators don't want to be bothered with the requirement that the kids be given medical examinations, or dental examinations. Or if they

kindly concede that they will get the medical examination, they will fight like hell the responsibility of following up to see that somehow the welfare system or OEO or somebody takes care of the needs of the kids. It's amazing what an awful fight you get into when you try to insist that people give preschool kids glasses or hearing aids or try to find out if they've got tuberculosis or kidney trouble. You can't imagine the sort of criticism you run into.

G: What is the reason for this kind of resistance?

B: They just don't want to be bothered. They've got lots of things, and this is not part of their normal tradition.

G: You're talking about educational--

B: I'm talking about the professional educator community, the NEA public school type. And the fact of the matter is, it is as tough in Portland, Oregon, and Chicago, Illinois, and in New Haven, Connecticut, in many respects as it is in the backward areas of Neanderthal America. The fact of the matter is, unless I'm sadly mistaken, with all the pressure that we've tried to bring together, we haven't gotten parental involvement one in the public school system of Chicago. The education community just doesn't want to be bothered with those black and Latin parents coming in, they don't understand them, and they can't talk. And, besides, when the end of the school day comes, that teacher wants to get her fanny out of there and she doesn't want to be bothered with any of this stuff. And that's the way they react. So Head Start in Chicago--I don't know what its other weaknesses are--but one of the five key points of Head Start is to try to get the parents informed and understanding and sympathetic

to the needs of the child in the education system. In Chicago it's a flop to that degree, 20 percent of it at least is lost. And that's what the professional educators are about when they think--and I'm afraid it may very well be so--when they get Head Start over into HEW, neither OE or the Children's Bureau has ever forced to my knowledge any public agency to do anything in their history, except maybe a little bit of integration, and that hasn't been them really. The Office of Education just does not believe that this is a role--

G: From the way you've been talking, it sounds as if this has been a perennial thing--this kind of resistance, opposition that you met early and you're still encountering today.

B: Oh, absolutely.

G: My question is, if you're still encountering it today, can you see any evidence that OEO programs, or at least the psychology of what OEO is doing and the message that it's trying to put across, has had any effect at all?

B: Oh yes. It has been accepted. There are a lot of states and a lot of places in this country where I'm reasonably sanguine that Head Start is good and that it will continue to be fairly good without our constant yammering and evaluation and criticism and pleading and cajoling and threatening. But the fact of the matter is we refuse applications, which is something that has rarely been done, and again, this is one of our problems. If people don't run Head Start programs for us, we've cut them off.

G: You mean the whole Community Action?

B: No, I mean Head Start. We did not insist the first year, like in Portland, we didn't insist that they provide hot meals the first

year, but, you know, sandwiches and milk, that's all right, cold lunch the first year. And maybe you don't get your parental involvement, and you don't have your aides and maybe they can't arrange to get a doctor down in Shelby County, Mississippi, to give the physical examinations to these kids. All right, so the first year you can't do it, but a little bit of progress every year is the way we've been trying to approach all of these things. And where there has been no progress or where there's a retrogression, we have cut off grants, and refused to renew them.

G: What happens to the kids?

B: Unfortunately in some cases they have to go on without. It's an unfortunate damned thing. But if Head Start is to be, as unfortunately a lot people would really prefer it to be, simply a baby-sitting operation, I'm not sure whether the kids are better off being baby-sat at home or baby-sat in lots of twenty, or twenty-five, you know. If they're not getting food and they're not getting education and they're not getting some of these other elements, they might just as well be home.

G: Sir, you were talking about some of the institutional changes that OEO had encountered and the kinds of resistance that it met. You also mentioned some possibility of some of the programs being spun off or transferred to other agencies. It brought to mind a quotation that President Johnson made in either '64 or '65 that the best way to kill a program was to put it into an old line agency. Would you agree with that statement, do you have any feelings one way or another about that?

B: I don't know that killing is an accurate word. It may be, in some

cases, starving to a point of emaciation might result, but in some cases I think putting things in old line agencies needn't hurt. The work study program that we originally had, Title 1-C of our act, a work program subsidized in effect by our funds for college kids who were needy, was first delegated and then eventually transferred by legislation to the Office of Education. As a matter of fact that transfer was initiated by us because of our feeling that these kids who had gotten to college were really a step above the type of kids that we really wanted to concentrate on, and also because we saw that the college work study program really ought to be expanded upward in terms of income to get a larger number of kids. That program I think probably was helped by being transferred to the Office of Education.

On the other hand, I think Head Start may very well suffer to some degree by being put into the Office of Education which is being discussed now. I have a sneaking suspicion that, given the predilections of the professional educator and the NEA type over in the Office of Education, there will be greater emphasis on putting programs in public schools. The public schools have been the most resistant to the elements other than the educational elements of Head Start--that is, the nutrition, the medical, dental, the parental involvement, the social service type activity, that we think is essential to the success of Head Start. I don't really think that the Office of Education or the Children's Bureau or any place over there is apt to push as hard as we did. That isn't to say that I think we've been a hundred percent successful. I would guess maybe 20 percent of the Head Start programs that we have sponsored or made grants for are Head Start in the 100 percent

sense that we like to think of it. But there has been gradual improvement through pressuring, pleading, cajoling, and bribing over the years to improve it.

Similarly I have a sneaking suspicion that some of the remedial education programs that we were running, and I know for a fact, for instance, that some of the migrant education programs that we were making grants for under Title 3 or our act have suffered badly from a decision that was made at the Bureau of the Budget level that HEW and OE would concentrate on migratory education and that we would reduce our involvement. The fact of the matter is there is not as much resources and not as much innovation or vigor in migrant education today, I think, as there was and there would have been if we had kept our deep involvement in it.

The problem is, I think, that just as some of the regulatory agencies of the government, and this is true of the state as well as of the federal government, sort of become the captives of the industry or the business that they are supposed to regulate. So it is that the government agency that is making grants to public bodies within the country tend to become the captives, the mental and spiritual captives, of the people that they're dealing with. This is true whether it be the public school system, the college system, or what have you.

G: What about OEO?

B: I think there is serious danger that this would happen eventually to OEO also. I don't think OEO should probably go on more than a total of ten or twenty years, and then I think it ought to be closed up. The fact of the matter is that it may not last that

long. But I think by that time it would begin to suffer from hardening of the arteries and the professional grantsman and wheeler-dealer would have learned all the ropes and we'd have lost our capacity for innovation. Then I think the place ought to be closed down. It may be necessary a few years later to start something else. As a matter of fact I think some of the evidences of hardening of the arteries are apparent already within the agency.

G: In line with what you've just said, may I ask what your own opinion is of how Shriver, or even Harding for that matter, conceives of OEO's original mission, if I can use that word too, as either a resource agency, program agency--in other words, an innovative agency as opposed to a straight bureaucracy?

B: Well, I think Sarge never conceived of the place--it was utterly impossible for him to conceive of himself as part of a bureaucracy. He was very intolerant of bureaucratic types. He saw himself as being part of a monumental effort at innovation, of helping to find new ways, of charting new routes, and with a lesser emphasis placed on resources as such. He always recognized that you had to have the resources, but he was interested mainly in the innovation, to the degree that he was able to give attention to it. I think he was primarily interested in innovation. I think he was never so happy as when he was talking with a bunch of people, trying to develop a new idea, talking to a bunch of child psychologists, educators, psychiatrists, medical people, and whatnot in the development of the Head Start program. It was an area of great excitement for him. There was nothing he liked better than that. He threw himself into that and into a number of the new problems

with a great alacrity, and to the degree that he didn't have to spend all his time keeping the agency alive, he spent most of the rest of the time trying to help develop new programs. To give you an example, we were among the first of the federal agencies to overtly, blatantly, and clearly make grants for family planning purposes.

G: There was a euphemism used at the time--oh, I'm sorry, family planning may be the euphemism for birth control?

B: Yes. Well, that was one thing we insisted on, he and I, that it always be called family planning. But the fact of the matter is, he was deeply involved in getting us started in that, and among other things I attended a number of dinners out at his house in which this subject was discussed. There were doctors, theologians, and general practitioners, and gynecologists, and psychologists, and people that had been over advising Rome, and all manner of people attending these things. We'd discuss at great length the pros and cons of this approach and that approach and this rule and that rule and the other one. And this is the thing he really delighted in, the development of new ideas. He just delighted having around him people who were able to work on new ideas and find imaginative ways. The last thing he would ever have wanted to do was administer an agency that was handing out money in a routine way, putting it in an envelope and sending it off year after year after year.

G: So he was quite willing, given the proper conditions, to have a program that had been fully developed, a research plan that had matured, to go if necessary to another agency?

B: I think there's no doubt that he would have been delighted to have

that happen. Because essentially the bigness did not enthuse him and once a thing had gotten away, I think as a matter of fact his inclination would have gotten to be just one of boredom. He liked the excitement of the change and the innovation.

G: Just to continue on this theme for a moment, I guess one of the public impressions that I certainly have, having read a number of articles about Shriver, is that one of his techniques in using, I wouldn't say using people but in having people work for him, would be the advocacy method of taking people with opposing points of view, bringing them in and having them argue them out and justify them--their position. Is this true?

B: This is true. This is one of the things he did, and as I have indicated, he encouraged my lawyers to help him make program people test their decisions. This he did. He was treading a lot of ground that no one had ever trod before, and this was his only protection that, in effect, the program dollars and the resources of the agency were going into useful things. Obviously some of it didn't, but this was about the only way he had, sitting on top of this ant hill of hundreds of people, all of whom were spinning up new ideas and spinning off new programs--this was the only means that he could use.

G: I'd like to turn back to another point that you made earlier, and that is you suggested that because of Yarmolinsky's absence Shriver was burdened with tasks that he otherwise might not have had, if Yarmolinsky had been here. And you also said, or at least I'm interpreting what you said, that part of what you did when you first got here was to evolve with program people in Community Action guidelines. My question is, it seems to me this is a rather informal

way of going about doing things. Was there any clear mandate as to what the general counsel's office would do, or did you just get involved in a lot of different things on an ad hoc sort of basis?

B: No, we had a general understanding. As a matter of fact the bureaucrats that had come with us set up job descriptions and organizational responsibilities and the flow charts and all that sort of thing. The fact of the matter is they don't differ a hell of a lot from those of other agencies. It's just that in this office my lawyers, I think, probably were as able, particularly in the early days, as able as any lawyers in any law shop in town.

G: How did you get your lawyers?

B: They came to us from all over the country. I had people come from New York and San Francisco, just pleading to go to work for this agency. New York law firms I could have hired my entire staff from people with anywhere from one to ten years experience from Wall Street law firms, the best in their classes--Law Review, Order of the Coif, the whole shebang. It was a period of great enthusiasm among lawyers; the government was an exciting place to be, and of course it followed closely enough after Jack Kennedy that it was accepted that people would be enthused. The fact of the matter is so far as lawyers are concerned, that situation has gone even further. Now, the Wall Street law firms are having a difficult time of attracting the best and the most able young men, because they're interested in doing something that they consider relevant. And they don't consider a lot of Wall Street operations relevant these days. But we attracted a very able bunch of people, and I think Sarge gave us probably more freedom and encouraged us because it became quite evident that we

did have some of the best brains in the house. As a matter of fact there have been people like Bill Kelly and others connected with the agency who time and again have told me that I command the richest resource in the agency, and I think that's probably true.

G: Speaking of relevance and exciting programs, it's my understanding that you were involved in the initiation of the legal services program. Could you elaborate on the origins of that, how it began and developed?

B: Well the idea for the legal services program--I'm not sure where it really got its start--obviously Legal Aid has been going on for some time. I think Edgar and Jean Cahn's contacts in New Haven were for a program that was going on up there, and their article, and Edgar's talking to Sarge enthused him about the thing.

Sarge then decided that he wanted to do something in this area and it was quite evident, the legal profession's fairly conservative, there'd been the AMA attack on medicare and their conservatism was sort of an example, he knew he had to do something about them. And there was something of PR operation, I'm not sure of the history, I was not involved in it.

It so happened however at that time there was probably the greatest president of the American Bar that has been in office in this century, Mr. Powell of Richmond. He came into office with the ABA, and simultaneously through some circumstances a number of the staff of the ABA were leaving, and he brought in some very bright and able young people.

At the New Orleans meetings, which I did not participate in--the Cahns were there and others but I was not involved in it--they

came up with a resolution saying that poor people were intitled to legal services. Even at that time, as I recall it, there was some plan that a national conference of some kind had to be held, or should be held, so Jean Cahn was given the responsibility. She was placed down in CAP and given the responsibility of setting up the conference and starting the guidelines. I was never quite clear, the fact of the matter I was not interested in knowing, but she evidently committed herself to hiring a great number of people. She got scrunch-wise with the bureaucracy down there; she even apparently crossed up Sarge in a couple ways that I was never clear on. And it became evident that this conference was not getting off the ground. And it was scheduled for--I forget exactly--April--this was the national conference.

G: Was this supposed to be a White House conference?

B: No, this was not the White House conference. This is the one that we carried on jointly with the Justice Department.

G: I think it was scheduled for April.

B: Yes, it was scheduled for April. Well, anyway, it was evident to him that it was not getting off the way, so he directed somehow that Jean Cahn get out of the picture and threw the whole thing into my office. I got Bruce Terris and Jack Murphy, who was then ready to leave Covington and Burling and go to teaching at Georgetown, to come up and work out of my office. They hired Kitty Shayes to come up and work out of my office, and they contracted for the writing of the Law on Poverty--that first little book--and they put out the invitations and got the conference underway, set up the agenda and the speakers, planned the thing; for the most part it was their

responsibility.

At that time we also had an informal advisory group and we worked on some preliminary guidelines for the administration of the program. And right up to the time, and after the time of the Law on Poverty Conference, we were negotiating with people in the established bar, the people like Mr. Powell and people from the NLADA and the various agencies about what would be in the guidelines in the way of the majority representation by lawyers of the committees, the governing boards, the legal services group in relationship to CAP, and all that sort of thing; and the degree to which there would be local control or federal control. Many things were discussed.

Then, after the conference was held, there was a process of setting up a permanent advisory committee and locating a director for the legal services program. I would have hoped at that time that Bruce Terris would have been the guy. The fact of the matter is Bruce, though he's something of a living saint and I'm very fond of him for his taking on the difficult causes, is something of an abrasive guy and he had irritated a great number of people, particularly in CAP, as well as some in the bar, and so he was objected to. But other than that I had no real candidates, except that I had to interpose when Ted Berry proposed a couple of people that the bar and I, in fact, thought were completely unsatisfactory. So I hung onto the operation until finally it was somebody in the American Bar Association who proposed Clinton Bamberger of Baltimore, at which time I very happily unburdened myself of that operation, which I really never wanted in the first place. The one thing I've been concerned about is playing the role we do of the critic in

the agency. I thought it very unseemly and indeed a conflict of interest for us to be competing, for instance, with other program branches of the agency for money for one we were running, and at the same time we had to be a critic of what they were doing. Although Ted Berry I'm sure today, and many others, think that we were all trying to hang on to it, that was not the case; it was just that I wanted to see that it got off with good direction and good guidelines and the best possible leader.

G: Do you mean by that that there was the possibility that the legal services program would have been operated out of the general counsel's office?

B: There were some, as a matter of fact, who proposed that. They wanted to keep it up here. And I think Ted Berry was afraid that that was what I wanted to do. Nothing could have been further from my mind. I had more than enough to do.

G: Was there any resistance on the part of the bar--what is it, the National Legal Aid and Defenders Association--to this?

B: No, the national leadership of the bar association, Mr. Powell and the people, Orison Marden and Junius Allison and John Kuminski of the NLADA, and others--they were very supportive of the idea. Jerry Shestak from Philadelphia and the former head of the Committee on Legal Aid--what's his name--McAlpin from St. Louis. All of these guys were tremendously supportive. And the fact of the matter is, I think they were, way ahead of their constituency in their liberal view on this subject. By and large they just did everything they could to make it function.

Now both they and we recognized that there were some problems

with the state and local bar associations, and indeed there happened to be some very difficult problems. In Florida, Tennessee, Mississippi, and various other places, lawsuits were started with varying degrees of responsibility on the part that were starting the lawsuits. But this almost became a cause celebre at the Miami meeting of the bar association in 1965 when Mr. Kuhn of Tennessee was the candidate for the ABA presidency. And the Tennessee bar had a resolution ready to offer, attacking the New Orleans resolution, attacking legal aid. I went down there and made a speech to the Public Relations Section on the first day of the convention and then Sarge came down later. I flew right back, I had not landed in Washington before Mr. Powell had called and asked Sarge to send me back again. I spent the entire ABA convention down there, living in a \$40-a-day room in the Fontainebleau on my \$16-a-day stipend, defending this legal services program from various people who were ready to--.

G: What were the grounds of the suits?

B: Well, they were attacking--this is group practice and is in violation of legal ethics, soliciting, and all manner of criticisms. One place, there was a criticism made on the basis that the act did not mention legal aid, as in fact it did not. The original act didn't, although I'm reasonably assured of the legality of the grants that we made.

G: There were some technical changes made the next year as I remember.

B: Yes, I made sure that I got some language in that stage of history to back me up on it the next year.

G: Was there a clear need for this kind of a program? If there was a clear need, then there was some recognition that the established, or the institutional law of the country, at least of the lawyers

profession, was inadequate to the need.

B: The fact of the matter is I think the liberal, the intelligent, and the bright people who are in a position to see the broad perspective obviously saw a need for a legal services program, a crying need! It was just that we're in a range of time in which the Supreme Court had defined the right of the indigent criminal defendant to have representation; the awareness of the necessity for equal justice under the law to be available to everybody in the society is beginning really to dawn on us as a nation. It's the only way that our judicial system, indeed our democracy, can work. But this is a concept, this is an idea, whose time was coming. I don't think it was that lawyers in the majority were aware of it. All lawyers would give lip service to it. Not one in ten thousand ever did anything about it. And the fact of the matter is there was a crying need. Volunteer services operate only to a very minimal degree to satisfactorily fill the need. If you're in a small rural area with a vigorous circuit judge who not only assigns criminal matters to the local lawyers in the county on a rotating basis, but he also knows when Mrs. "Glotts" down the street has got a legal problem and she comes to him and he says, "All right, you go over to Charlie, I'm going to call him," and he picks up the phone and says, "Charlie, you're going to represent Mrs. Glotts. She has got a problem with her landlord. You don't represent the landlord do you?" "No." "All right, you're her lawyer. Take care of it, and I'm watching," and puts down the phone. You know, volunteer service maybe will work. But in the big cities it won't work, and out in the vast areas of the country where there aren't enough lawyers at all anyway, it

just doesn't work. The vast majority of the people have no effective protection of their legal rights.

INTERVIEWEE: DONALD M. BAKER (Tape #2)

INTERVIEWER: STEPHEN GOODELL

February 24, 1969

B: In this particular time in history in which when so many of the poor, the black, the Latin American, and indeed a lot of not so poor people in America, are having reservations and doubts about the viability of our system and the fairness and equity of our system, our legal establishment, I think it's all the more important that we as a nation take steps to assure that legal rights are provided and assured to all, or at least to as large a portion of our population as we can. I think it may be more important in the ghettos of America for the people to feel that the courts system and the judicial system, that the police and our system of justice, that legislation is operable and working to their benefit, or that it can be used to their benefit. This may be more important in the years to come than any other single thing that we will do.

If to any degree the riots of recent years were a result of a loss of confidence in the system, then certainly legal services can play a tremendous role in reestablishing that system. And when one poor old lady, who has been taken by some fly-by-night businessman and has maybe been deprived of her home or is threatened with loss of her home, when her rights are established by the judicial system and the system of laws that we have through legal aid or through some other volunteer legal services, this probably does more to demonstrate the importance and the value of our systems of equal justice under the law than anything that anybody can say. And

similarly when poor Negro kids get legal protection before the courts and they can understand from the process that they go through that if they are punished or found innocent that it is because they are guilty or innocent and not because they're black or not because they're poor, then this is most helpful to the system. And to the degree that we fail to assure the young and the poor and the alienated, even though they may not be young or poor, to the degree that we fail to assure them that they have a vested interest in the system, and the system can be used to protect their rights and interests, then to that degree I think the whole system that we have in this country is threatened.

G: It seems to me, and I'd like you to comment on this, that the legal services operation will perhaps be the cutting edge of the war on poverty and confrontation with--if I could use the current slang--the power structure, particularly in some of the states. I'm thinking specifically now of the imbroglio that's going on in some parts of your own home state of West Virginia, having legal services lawyers investigating and finding the conditions of people in poverty areas and the kinds of deprivations they're being put through simply because it's an economic arrangement, for example, and that a challenge to this will occur, which inevitably, I think, will pose a political question.

B: Yes, I think that's true. I think in the long run that the impact of legal aid on the improvement of the lives of the poor, and in fact the improvement of the viability and the relevance, to use the terminology of the college kids today, of our whole political and economic structure--the legal aid may be the most important thing

that we are doing. And legal aid will have more impact on our total structure of our social, economic, and political structures than anything else that OEO and perhaps even the federal government has done on the domestic scene in our life time. There's no question but that the decisions resulting from, for instance to mention one which I think is one of the best, the California Rural Legal Assistance program out in California--I haven't said it right, it's CRLA--has probably done more to revolutionize within the legal structure of the society the operations of state, local and federal government in the state of California than anything anybody has done in the last hundred years. They've challenged school systems in the way they have been treating kids, they have challenged the welfare system, they've challenged the labor department in the way that they used the migrants and permit migrants in, they've challenged the governor, they've even undertaken a system of educating the justices of the peace out there. California doesn't require that justices of the peace be lawyers, and the migrant workers were succeeding in overturning many of their decisions. And so what they've done is to evolve some guidelines which they've put on cards and provide the justices of the peace a guide in instructing witnesses before them and advising people of their rights and whatnot; and so they're helping out in the administration of justice. And there's no doubt about it the impact of the ruling, prohibiting the use of residency requirements for welfare benefits, is one of tremendous importance and there has been a great number of things that have not been discussed. For instance, in many public school systems if a kid gets difficult or if the

teacher simply doesn't like a kid, it's easy enough for the teacher or the principal to bounce him, just throw them out. It has now been fairly well established, I think in a number of states and probably for the nation as a whole, that kids are entitled to an education in this country, and that there has to be a sound and legally justifiable reason for removing them from the prospect of an education, and I think that's all to the good. The legal services, I hope, is the most secure of any of our programs. Not only will it have impact and bring on needed change, but it's hard for anybody devoted to equal justice under the law to attack. And it's one program in which you can find the most vigorous conservatives lining up shoulder-to-shoulder with real liberals in the defense of what legal services is all about. And so I hope for that reason alone that it will be one of long life.

G: I was just about to ask you a question that related to that, and that is, is it fair to say that the more successful a program, the more opposition it will encounter, and I was thinking vis-a-vis legal services. I think in 1967 the Congress began to put restrictions on the types of activity the lawyers could engage in in that program. I'm sure I'm going to be wrong on this, but it was something to do with---

B: Criminal, I think the '67 amendment--let me say, it was in part an act of what I hope is temporary insanity on the part of the Hill, particularly the House of Representatives. In response to the riots there was, as you will recall, a great number of pieces of the legislation--amendments introduced to prohibit anybody who'd ever been

in riots or virtually had been in the scene of a riot from getting any benefits. As a matter of fact one of the amendments was so broad that had it been adopted--it literally said that a Head Start kid who got in a fight with another Head Start kid had to be thrown out. It didn't literally use those words, but it could be interpreted as being that broad.

That amendment was attached specifically, I remember, to the legal services program in the House side. When it got to conference the conferees knew that they wanted to change that. Most specifically they wanted to change it because the conferees, unlike many of the members of the House and Senate, were very much aware of the fact that the legal services people in Detroit and Newark and a number of other places had played a very important role in cooling the disturbances during the recent riots. They wanted to protect the possibility of that continuing or going on should riots occur again. At the same time they were faced with the necessity that they didn't really feel, both houses having adopted this thing, that they could just wipe it out altogether. At the same time there was some feeling on the part of those interested in legal services that from a public relations point of view and, in a theoretical sense, from a financial point of view, that they were justified, in not having the limited funds available for legal services program through OEO, available to criminal defendants since under the Supreme Court decisions the states were supposed to provide criminal representation anyway. Obviously this left some broad gaps but their thinking was they had scored a victory when they came out with this compromise, which toned down the original amendment

and came up with what they thought was a workable limitation.

G: I'll like to ask a very general question, and that is what in your recollection are the high points and the low points, the key decisions that have been made, the key policy changes, and so on, in your experience as general counsel to OEO?

B: Well, probably the first in order of sequence was the matter of the degree to which, and if, and how, we would make grants to church-related institutions. Our statute clearly called for it, but obviously there were constitutional problems. We spent considerable time studying applications and the facts behind applications, and eventually came up with some guidelines that we thought would make it possible for us to make grants either directly to church-related institutions or through Community Action agencies or through public school systems, or other private non-profit groups to church-related institutions. We did that largely on the theory that the federal government could legitimately provide a very limited type of service to particularly needy children regardless of where they were and regardless of the institutional setting where they could be most advantageously and most economically reached. Just as they could be fed a school lunch program at a parochial school or they could be given shots for measles or chicken pox or smallpox in a parochial institution by the public health service, so we felt that these limited range of services could quite within the intention of the Constitution be provided to poor children in the parochial school, so long as we limited the type of thing that we were providing to the special remedial and non-curricular educational assistance and in no way provided support for the institution as such.

Certainly in that area, just as the Economic Opportunity Act was a precursor of the Elementary and Secondary Education Act, so our willingness to make grants in this area has effected the practice of the Office of Education, I think, under the ESE Act. I think they have probably done more with or for directly and indirectly the parochial school children than would have been the case had we not broken the ground. The fact of the matter is I suspect they have not gone as far as legally and constitutionally they can go, but they have observed this and gone further than they otherwise would have gone. In part, as I say, this is a matter of legislative history. The idea for the church-state compromise that was effected in the ESE Act was in fact implicit in the Economic Opportunity Act and in our practices.

Other interesting and challenging things that we participated in was the development of the family planning guidelines, which was a combination of legal, medical, and, to a very substantial extent, public relations problem for the agency. We worked on that, discussed it with experts, with theologians, with people in favor and people against. It was one of the things that was interesting in the byplay that we had with, for instance, the opponents of our church-state policy--people like Leo Pfeffer, representing the American Jewish Congress, people from the POAU, from the Council of Churches, from some of the more fundamentalist religious groups, people from the American Civil Liberties Union, and others--who were very much opposed to us making grants to church-related institutions and were also at the same time very much in favor of us making grants for family planning. And some of the Catholic bishops and, again, some

of the more fundamentalist religions groups were in favor of us making church-related grants to parochial schools and against our involvement in the family planning. Well, one of the mechanisms that I used whenever I had one of these groups together and things were getting a little hot, I would throw out the other subject for discussion, and I managed to stave them off over a period of years. In the first six months of our program I probably had eighteen or twenty confrontations with groups on one side or the other of one or the other of these issues. And sometimes there would be as high as thirty or forty people, lawyers and religious (ministers, priests, rabbis) very determined. One of the things I characteristically used in these confrontations was to change the subject to the other issue in which we were doing something that pleased them.

In other ways we had a number of problems over the years-- finding mechanisms for providing housing for a number of our programs where it became necessary for us to invest dollars in private property to permit the use of a church basement or a store front for Head Start programs. We had to provide adequate lighting, insulation, fire protection, exits, windows, toilets; the typical state law has very sharply defined criteria which it applies. You can't bring more than a few children together in a given space without meeting all these criteria. All of these things, not contemplated at all when the act came into being, but essential to the provision of the services, had to be worked out, not infrequently in the face of apparent rules or principles of federal management or federal spending that would have precluded it.

I remember one problem on June 30, 1965 when Governor Rockefeller

had vetoed a grant to New York City and suddenly at the last minute, it became unavailable. It was too late for us to find a new grantee, or to make a new grant, to put together a new package, so we were on the phone with people in New York and one of my lawyers came up with the idea that we simply come up with a new grantee. And that we make a grant in contemplation, in effect, of something coming into being. And that was done. Otherwise some ten or fifteen million dollars would have reverted to the Treasury and the city of New York would have lost out.

G: You mentioned the church-state constitutional questions. Did you encounter any other constitutional issues?

B: Well the legal services program, I think, was challenged at least once on a constitutional basis. I don't recall that I had much to do with that, and I don't remember the basis for it. I might say, in connection with that church-state thing, I was called upon to testify before the Erwin's Constitutional Rights Subcommittee twice and before the House Judiciary Committee once. There have been, I'm sure a number of constitutional questions that have come up but offhand I don't recall.

G: I was thinking of one--

B: There's always the constitutional question of whether there has been due process when we've cut off somebody's grant. Another area in which there has been some question was the hiring and firing. Probably the worst problem I had with Sarge was his response to learning that apparently some very undesirable character had been hired by a Community Action agency, or had incited a riot or something, was to say, "fire him," which he did in several instances. In some

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cases I suppose the people were fired. I tried always to caution him that there were limits to his authority under our law and under the Constitution to deprive people of employment under such circumstances. Indeed, I questioned at times whether he wanted to take on the responsibility for such a serious burden. Sometimes when the political and the newspaper heat got pretty great, he used to chafe under my advice. On one occasion, I was never quite sure how it came about, I found myself over in the White House with a staff aide, who was sitting in for Joe Califano, Sarge and the Attorney General, in which Sarge and Cater and Califano, in effect--I guess Califano was there for a few minutes--were challenging whether my view as to the legal authority of Sarge to fire, or cause to be fired, people hired by a Community Action agency or what have you in the country when they'd been arrested, say, for rioting or inciting to riot or for participating in some unseemly goings-on.

G: This is before conviction?

B: Before conviction, or after conviction. And I was very pleased when the Attorney General, without my having to open my mouth, fell right into line behind me.

G: Was this Clark or Katzenbach?

B: This was Clark. [He] fell right into line behind me and supported me all the way. I must say for history's sake and this is one thing I would like to say, the Justice Department gave us just tremendous support at every turn in every possible way whenever we called on them. They helped, they gave us advice, and supported us. Another case--getting back to the church-state thing--when we were negotiating with the Office of Education on the Follow Through program, again the Office

of Education did not want to make any grants either directly or indirectly to any church-related institutions. The decision I fought vigorously, arguing that it was our law they were administering and not theirs, Follow Through coming under Title II of our Act. At the first meeting in Doug Cater's office, Wilbur Cohen, Doc Howe, Allison Wilcox and various other people were present, and I expounded my theory of why we were doing it and how we were doing it and they went away very dubious. A few days later we met again there with Frank Wozencraft of the Office of Legal Counsel and a couple of his staff, and again they fell right in behind us and supported us right down the line. And that resulted in at least the letter of agreement being in accord with our statute, I'm not sure what their practice has been. But in every case in the handling of criminal matters just about everything we've called upon or whenever we've asked for help, the Justice Department has just been tremendous.

G: What kind of an arrangement do you have with the Justice Department? You say the relationship has been good. Do you need to consult them frequently?

B: The law requires, for instance, and did prior to the enactment of our statute, that if federal monies have been misused, lost, strayed, or stolen, that they have to be informed. We frequently refer those matters to them. We frequently call upon them for advice simply in legal matters on an informal basis sometimes. Just over the telephone you call up and ask somebody who's in a position to have a good legal background on that area, and you ask for his advice. Similarly we've had disputes and disputations from time to time with various other government agencies in addition to HEW, with the labor

department, with the Civil Service Commission, in which one or the other or both of us will formulate our position and present a question over there. The process normally calls for a formal asking, in effect, to see if they will want to entertain a question; in our case they've always been willing to entertain questions. Another of course is in the civil rights area where, particularly in the early days, we were operating in the dark and without a large staff and expertise in Title VI and whatnot and we were able to lean on them.

You asked about the interesting things that we developed. We came up with a novel idea in this office, another one, in the Head Start area where we've subsequently been upheld by the courts. We argued that Title VI of the Civil Rights Act permitted us to close up a Head Start center without going through the full procedures of Title VI, where they discriminated in hiring teachers, not where they were discriminating against children. Normally the two go together. Title VI says if they're discriminating against children you have to go through the full processes of Title VI. That would have been awfully difficult for a summer Head Start program. By the time you started the process the Head Start program would be over, so Title VI was no remedy at all, and we evolved the idea that we could terminate because Title VI does not cover cases where you are terminating because of employment. And that subsequently has been upheld on the basis of teachers. Now the theory of that is that was not discrimination against the children as such, but it was an essential element of the administration of our program itself, and not a civil rights issue that was involved. So that was the

novel idea we evolved here, that subsequently was enforced by the courts.

G: Have you had any relation with the FBI of the justice department?

B: Yes. This office does not often relate specifically to the FBI. Our Inspection Office is more apt to relate directly to them. We relate more frequently through the criminal division of Justice. I would call up Nate "Tulley" Kossack [Nathaniel] or someone over there depending on what the matter is, or sometimes he would call me. Frequently they would get word that something is going on somewhere in the country that he thought maybe we didn't know about and he'd call and alert me. Recently we had one and he called me on the phone when this sit-in at the local Community Action neighborhood center was going on here in Washington, about a week and a half ago. He called me up to alert me that that was going to take place, that they had word that this was being planned. We had that sort of a very felicitous relationship.

G: I was wondering, again in line with this, do any serious differences in legal opinion or policy arise between this office and either other government agencies, the justice department or the White House, or even within the agencies or departments within OEO?

B: Well, we have some hot legal arguments from time to time within the agency. The fact of the matter is some of the program people are very bright, and lawyers are not unique in their capacity sometimes to make legal-like noises and legal arguments. So we have some very good discussions. When it gets right down to it, our position has invariably prevailed within the agency. On the outside, we have had what I would regard as primarily good-natured differences, in a couple

of cases nothing that I regarded as very serious. Probably the most serious from a programmatic point of view was that discussion of the church-state issue on follow-through.

We had one recently where we argued with the Civil Service Commission and, in fact, the Office of Legal Counsel of the Justice Department that the Hatch Act provisions, prohibiting political activity in our act gave the director, concurrent authority with the Civil Service Commission on Hatch Act violations of particular types, and thus that he could terminate or take other action to discipline a CAP whose employees had engaged in political activities. The fact of the matter is the Justice Department found the other way; in effect they said if it's covered by the Hatch Act, the Civil Service Commission has plenary authority. Well, you know, that was not something in which I was going to die or live. What I primarily wanted was the Justice Department on record as having given that opinion. That took the director of this agency right off the hook, and I was perfectly satisfied with that decision. Sometimes when we want to do something of somewhat doubtful legality or I have some problem with it, we will ask if they would be willing to give an opinion. Occasionally they have, I don't remember anything offhand, but they've helped us out that way a number of times.

G: Does the general counsel's office abet in such investigations, for example, such as the GAO of OEO?

B: Abet? Well, we cooperate. We have a role in the GAO process. Particularly we've had some discussions with GAO legal counsel and personnel from time to time about working out some arrangement with what we regarded as very sensitive documents, typically our inspection

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reports which sometimes contain confidential material, or material on which people have been assured confidentiality. You know, sometimes you have informants, or we have informants, or our inspectors have, or FBI people have--informants that are within, say, a Black Panther organization, or some other local group, and disclosure of his name or the fact that he's an informant might be physically dangerous, even be mortally dangerous. And we've always been very concerned and probably our most frequent contact with GAO is in protecting those documents. I think we've worked out a process now where when they want to see something of that nature, an inspection report or something, it is set up here and they come up and read it in our office. They don't take the report out and they don't make copies of it. They take notes and specifically they will be cautioned as to individual paragraphs and things that they've got to keep secure.

G: What prompted that question was I was thinking back to an investigation the GAO made and the conclusions that they reached. I think it was regarding the Parks Job Corps center where they found what they called waste, inefficiency, and so on. What happens in this kind of a situation? What does general counsel do?

B: Well, we review the draft. In that case I think we reviewed the draft report GAO had provided us on the Parks situation. I think it's accurate to say that my office regarded the draft reply that the Job Corps people had put together as an extremely weak document. There was some argument and debate as to whether or not this was our role and proper function; we continued to argue regardless of the merits of the procedure that it was still a lousy document. I think we influenced a little bit and, it ended up being improved. But

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the fact of the matter is I don't think it was entirely responsive to the criticisms of the GAO report, and I think there were some better defenses for the agency available than the ones that were promulgated in the response. This is unfortunately the case. There have been a number of instances where that has taken place. I suppose it's just a fact of life that when it comes to marshaling arguments to defend an individual or his action or the actions of an agency or a position, that by and large lawyers are better able to marshal and assemble the facts and the arguments and put them in a more effective fashion than program people.

G: Even historians?

B: I think that's true in dealing with a specific type of criticism of a specific thing. Lawyers, I think--their very training provides them with the means of analyzing the institution before which or to which you're addressing an answer, and how you answer, and the nature, and the sort of approach that is apt to be most beneficial. This is not the invariable case by any means, but by and large I think lawyers do a better job of this than any other group that I know of.

G: Again, how did your office respond to such things as the riots in 1967? What was your involvement in that?

B: Specifically, I don't recall. In general, I have the impression that most of the time we were urging everybody to be cool and not do things precipitously.

G: You mean here?

B: Yes. Within the agency and out there too. "Let's not go around firing everybody and shooting off our mouth in press releases and responding to those who are accusing us of starting the riots."

G: Was there that kind of panic psychology?

B: Yes. The fact of the matter is OEO has always had a certain amount of paranoia, and not without some justification. People have been shooting at us since the beginning, and the normal response of people who are being shot at is to develop the flinch reaction. In not a few situations it was our role to try to hang on, and batten down the hatches, and urge caution and prudence and the avoidance of a precipitant decision or action.

G: Do you operate outside of OEO, for example, vis-a-vis Congress?

B: Yes.

G: Again, I'm thinking back to '67. In what way?

B: You mean me personally?

G: You or this office.

B: Are you relating this to the previous question, or are you starting a new--

G: No, to the previous question.

B: Oh yes. Although I frankly try to discourage generalized questions, not infrequently, as late as '67 less frequently now, I would go to the Hill in response to inquiries, learning that given members were upset about something, and talk to them or their staff about the facts as I knew them.

G: Was that the function of you as an individual because you knew them or they knew you or because you were general counsel?

B: There was a combination. In large measure I suppose it was because of me. I had spent four and a half years in the House side, I knew all the members of the committee, and they knew me.

G: Of which committee?

B: Of the House Education Labor Committee. And I knew a lot of members that weren't on the committee, and they knew me, and the same was true of the Senate. So it was natural to some degree that they would call on me when they had something. Either they wanted to help something or they were angry about something and they wanted something done. Similarly as members of the House and Senate talked to each other behind that back rail or in the smoking room, saying something about "that damned OEO, it's driving me out of my mind," or, "that CAP out in my city is doing so and so," some one of them would say to the other, "Why don't you call Don Baker? He's a good guy, and he'll do something for you if anything can be done." And I got a lot of those calls in those days. I don't specifically recall questions on the riots, but I'm sure there were some on the facts of what was going on at Newark and Detroit and this sort of thing.

G: Did you yourself have access to the Office of Inspections?

B: Yes. I don't get into their files, but I get their reports when there's anything that I'm apt to be interested in.

G: You cited as an example some congressmen having problems with his own local Community Action. What kind of problems, in a general way; not to be specific?

B: Well, Community Action gets to be a problem for a congressman when it's doing a good job or when it's doing a bad job, or sometimes when it's not doing a job at all. You know it may be that the Community Action agency was pressing a school system to do something, or there might have been militants threatening or leading a demonstration on City Hall.

G: Were there ever instances of a direct challenge, not perhaps to that

congressman, but to a congressman's political friend, such as a mayor?

B: Oh yes. Typically congressmen--though not invariably--most frequently are not good friends with their mayor. The fact of the matter is normally a congressman and a mayor or the superintendent of schools or whatnot will have arrived at an accommodation with each other, and any threat to the status quo frequently is perceived on both sides as a threat. And, yes, there's not infrequently those troubles. In the early days you know they had CAP people running around making speeches all over the place and jumping into a race for the school board, or running against the mayor, or for county supervisor or such whatnot, and this caused a great deal of hysteria and hurt feelings. And there would be criticism that some agencies got grants and others didn't, and we did it through the local CAP, or the regional office did it, and you know there would be threats to cut off some program or not to go forward.

G: I was wondering, I seem to keep coming back to the Community Action program, again this 1967 year, which was so critical it seems to me, both from the Hill and OEO's point of view, in Newark I guess that Community Action was working at its purest. I've seen that quote. And the kinds of problems that it would engender would perhaps have the effect of re-evaluation of Community Action policy or guidelines in OEO. I'm stating that but it's really a question. Would it have that effect?

B: I think Newark in point of fact did have a very strong effect. The fact of the matter is Newark probably as much as any city in the country influenced the changes in legislation in the sense that a great deal of what is thrown together in the so-called Green

amendment was really a result of Newark and what some of the members of the committee learned about Newark, either through the testimony of the police and mayor and various people before the committee, or through their investigations as to what was going on. I think it was clear that the members of the committee who might not have been disposed otherwise decided that, one, Newark has too large proportion of poor, that there was too much poor domination, not enough establishment, not enough in the rest of the community.

G: You mean on the Community Action board?

B: Yes. It was clear that they were impressed that the Newark board was so big that it couldn't possibly function; that, again, the mayor and the city councilmen and the local doctor and the various and sundry other people who were on the board who might have provided some guidance couldn't stay up until 2 or 3 o'clock in the morning because they had to go to work the next day, and so a lot of decisions were left. I think the decision, Mr. Chairman Perkins amendment with respect to the quorum, fifty-three members of the board, and various and sundry of those things--Newark had no impact right on the legislation itself. I was prejudiced. As I indicated, I was always a "program oriented" Title II guy anyway. But I think that there were a lot of people that had recognized that San Francisco, which was another "poor-dominated" board, and Newark and various other case examples, had demonstrated that this good thing gets carried too far, and that a majority of the poor on the board means very damned little or no program out there, getting services to people that need them. It just means a mishmash of nothing at all except organizing people for the sake of organizing them, and frequently enough to

cause the program harm--organizing them for attacks, rational and irrational on what they perceived as the evil establishment.

G: I think it was in 1967 that Joseph Kershaw and Shriver testified to that effect, and that a lot of the hearings were devoted to a reassessment of what Community Action was all about. It's my impression, and I'd like you to either confirm or contradict me on this, that up until the riots, I think it was at the beginning of the session, there was a lot of apprehension as to whether OEO would go through that session intact. That was the year of the Republican Opportunity Crusade and so on. And up until the riots, it seemed as though OEO was going to go through, that it would make it. And then the riots came along and with the National Liberation School and the Houston gunshots and various things, and Newark, that extended hearings on it, with the Newark people coming down. There seemed to be a shifting or refocusing on this whole problem of Community Action with the end result being the Green amendment. I've seen that amendment interpreted in two different ways. One, that saved OEO in 1967.

B: Well, I think in a sense it did. But to get back. The fact of the matter is OEO was probably in as much trouble in January of 1967 as it was in June or July, at least that was my perception. I remember writing a memorandum to Sarge to give to Larry O'Brien and Califano, arguing that the OEO legislation ought to be taken up as late in the year as possible. There had already begun some criticism of Lyndon Johnson on the part of the Democrats who were getting very hysterical after the elections of '67 and not deciding whether they were going to be with Lyndon or not. And I argued, I guess erroneously as it

now turns out, that as 1967 came to an end there were going to be more of those guys coming to their senses and realizing that whether they liked Lyndon Johnson or not they were going to have to run with him, and they would be much more apt to be with him program. I had a whole series of political arguments that in my mind argued for a later rather than an earlier consideration.

Also at that time I was arguing simultaneously that we really should not go up there again with massive piece of legislation that we went up with. Right up until the end I argued. But between Lyndon Johnson and Sargent Shriver wanting to go up with a new bill, a new look, and the political pressures, I lost out. The fact of the matter is what we went up with was largely pretty much what we were doing, modified a little bit by some of the things we had learned. But mostly it was just sort of a codification of what some of our regulations that we had been trying to enforce and sometimes not entirely successfully, but we had been trying to enforce. Now I would have argued, and I think on the benefit of hindsight I was right, just as I think I was right in, '65 and '66, that it is far better to have a number of those same type amendments ready to peddle to Congressmen that they can take credit for. Everything that we had we could have had typed up and passed around in bits and pieces for for Congressmen and Senators to propose themselves, and this would have given more credence to the legislative process and they would have been able to take more credit. And probably there would have been fewer amendments. What happens in the House, particularly in an exciting piece of legislation like ours, is that nobody reads it. One of your problems is that you have guys jumping

up to offer amendments that are already covered. And so it just makes for confusion. Well, anyway, I lost out on that.

I don't remember when it was in 1967, but another thing I did was give Sarge a memorandum in which I urged him that we really ought to have something like the Green amendment--that was not going to pass without something like that. The proposal I put to him involved a series of steps--I forget--using the Council on Intergovernmental Relations to develop a model state law, one of the problems with Community Action in the public body has been the state law on constitutional division--to develop a model state law. I contemplated an amendment that would have let that agency work on it for a year or two and given us time for a transition. But my recommendations which was all in oral form, it was never got in draft forms, was entirely consistent with what came out in the Green amendment. To anybody who understood the House of Representatives, it was clear that between the absolute enemies of the program and some who were fairly favorably disposed to it but who were more public agency minded, and some who were genuinely concerned about the establishment of this new political entity (as they saw it, who never stood for election, and were responsible to nobody and yet had all this federal money to spend) to many members of the House this was a very disturbing and stressful concept. You know, a lot of these guys are lawyers, and they like neat and orderly things with responsibility and power going hand-in-hand. It was just quite evident that something was going to have to take place to put a new face on Community Action and to make it either actually or apparently more responsible and more responsible meant tying it closer

to state and local government than it had been, either really or apparently. But that was the burden of my argument in essence. And as it turned out to be true, that's precisely what happened.

G: This is a very general question, but in 1964 the legislation, as you have conceded, did pass without much difficulty and there seemed to have been some sort of widespread support for the war on poverty. It was declared in a flourish of rhetoric and there was support for it, it passed the Congress, and so on. And by 1966 even, I think it was the first critical year in '67, '68, and so on, particularly in this last campaign, the war on poverty became an issue. Why in your view do you think the OEO has fallen from grace, so to speak?

B: There is a number of reasons for that. One of them, I think, to be perfectly candid, we've made some mistakes. We've failed in some areas. Parenthetically I can say a very substantial part of our failure was at least influenced or encouraged by the very rhetoric that got us passed in the first place, that caused us to speed the damned thing up so fast and to do it and get it out, get the money out, but that first year--first seven-eight months--was just absolutely the most hectic of my life, that last month of June when we were just literally pushing the money out the window, it was just mad. It was sort of insane--that you have to say. But the fact of the matter is every member of the House and Senate, at least it appeared to me then, every one, friend and foe, were all beating us across the head and shoulders because they wanted their money for their program, and they wanted this Job Corps camp here and they didn't want one there and it was just--but mainly they wanted them. And they wanted the CAP money, and they wanted everything, and they wanted

it out there like yesterday. And there was a push, and there was a big push on the Job Corps centers. Lyndon Johnson was absolutely crazy about the way Camp Gary took off, justifiably so. His first instinct was to make that a 5,000 man base within a matter of months, which would have been absolute disaster. He finally got talked into leaving it at 3,000. But he was one of the real problems with Job Corps early on in that he insisted on just a sky-rocketing expansion of that outfit. He wasn't the only problem in that respect but he was one of the major, I think, because of his very enthusiasm for getting it done. I think there were other problems like the Bureau of the Budget couldn't quite make up their mind what they thought the Job Corps should be all about and how it should be run, you know, as between the Employment Service and what the roles should be and who was doing what. And then I'm sorry to say that Sarge vacillated somewhat in his views as to what was going on, and those poor fools down in Job Corps were running back and forth changing the rules of the game about every other week. And this caused some of the problems that still remain. The fact of the matter is we really never had enough people. I never had enough people in my office, I have never been up to staff in my office in this agency until we got that tax bill free. For the first two years of this agency, I just didn't have time to hire people. It was just such a madcap operation. But even if I'd had the people I wouldn't have had enough, and a lot of the program people never had enough people to do the job that they were set about doing. I remember once--when was it, '66--Stu Udall and the Bureau of Indians Affairs were catching such hell from the Congress for what was happening on the Indian Reservations, what BIA was not

doing. I happened to be in Sarge's office. He called Sarge and said, "You guys are doing such a great job with the Indians, I want some help. I've obviously got to reorganize the BIA. Can I borrow a team?" Sarge said, "Who do you want?" "I want a whole team of people." Well, you know, we've got two professionals and a secretary! and they were running our Indian program. We just never have had enough people to be able to provide technical assistance in monitoring and keep an eye on even the controversial sort of thing that any sane man would watch very closely.

Now, having said that, and excused it, there were some bad program judgments. I think we have always had a rash of people-- we attracted a certain element of people, probably at the extreme edges who can be considered almost sick who would go out for confrontation for its own sake as a perfectly justifiable thing, and there's a few of them in-house here and more of them got hired out to various places around the country. They did us and did the program, I think, immeasurable damage with some of their wild antics.

Of course the very pressures that I described as being the sort of thing I anticipated gradually escalated.

Another factor, it was becoming obvious by 1966 or '67 that the money was not going to be forthcoming in the amounts that had been anticipated and this led to its own kinds of frustrations.

G: Because of Viet Nam?

B: Because of Viet Nam. And probably also because of some of the things we weren't doing right, and our demonstrated incapacity to do as well as someone wanted us to do with what we had already. Viet Nam, of course, played a big role. And I think our own inability to go

off in so many directions at once and adequately control them was a big factor. The fact of the matter is, we really gave amazingly little guidance, considering what we were trying to do, to these entities that played a role in creating the Community Action Agency. Perhaps if we had gone a little slower they wouldn't have caused so much heat. Maybe they would have, I don't know. On the other hand, you can just as easily argue that if Sarge hadn't been going around fanning the fires and setting up CAPS all over the country and getting everybody with something of a vested interest, there wouldn't be people out there to beat the drums when the time came when we needed them; and the fact of the matter is in 1967 there was a hell of a lot of people out there beating that drum, and who were enthusiastic.

I suppose in addition to the other things, there's just a rule of human nature that if you are doing things and bringing about change you'll get some support from people that are enthusiastic about the improvement, and you'll catch a certain amount of hell from people who perceive a threat, and this, with out regard to whether you're doing good or bad.

G: I was just wondering whether or not Community Action in this sense was largely responsible even though OEO certainly isn't simply Community Action?

B: I think that's true. People don't think of OEO as anything other than CAP, really. It's sort of beyond the national conception. One of the things that infuriates me about newspapers is that they've contributed to this, I think.

Another misconception that they all contribute--it was in Joe

Also ['s column] this morning. He said in effect that CAP employees are federal employees. Another example, here's the Washington Post, which is a perfectly responsible, decent newspaper. This guy came in from West Virginia who was the former Charleston, West Virginia, or some place up there, assistant CAP director, who comes into town and tries to rape this girl under the bridge up here. There was a series of the attempted rape, his arrest, his conviction, and his sentencing. And all four times in both newspapers in this town that I read, he was headlined as an OEO employee. We've lived with that. And the newspapers, while some of them had been pretty good in writing research pieces and extended study pieces--

G: Sellover of the Christian Science Monitor?

B: Yes. They've done a lot of that good stuff. Individual reporters and some, I think, newspapers, have never ceased to be willing to play up this sort of thing. You know, a raper from West Virginia comes in--has just gone on from the beginning; it has been a favorite whipping boy. And the press and TV have suffered from the same sort of ambivalence that the country does, I guess. They sit back objectively, they know that it has got to be doing some good, and it is, but it's also just the juicy damned morsel--it is news! It's federal money and it's going to poor people and they get into some awful messy situations. You've got New York City, and NYC, and any time you've got the combination of things going that we have it's very juicy and you sell newspapers with it.

I've never been able to understand--for instance, I know as a lawyer, and as a guy who practiced law in and around Detroit, and as a matter of fact a guy who worked at the Detroit tank arsenal at

one time, that there's probably a very substantial, the higher proportion of chicanery and cheating and fraud and all manner of things, and, you know, we're talking about big amounts of money! But this is not news. There's a structure, a renegotiating board, and all manner of things that goes through and annually billions of dollars get washed down the drain and nobody ever knows about it. This, without regard to the monstrous boondoggles like the F-111 and the B-70 and the Bomar Missile and some of the rest of the crap. Just the knavery and chicanery in the defense procurement far out does anything that we've done in percentage terms. But somehow we are the favorite whipping boy. It's sort of like a bastard child, the newspapers love it, and they want to kill it at the same time.

G: Do you suppose that it has anything to do with the inability on the part of the press or the country at large, which is a gross generalization, to accept the more recent sociological interpretations of the phenomenon of poverty? And you are talking about the "undeserving poor" that Edith Green conceives of. I wonder how much this is tied in.

B: Oh, that is tied in. That was one other thing I forgot. I get interested in the sound of my own voice. And I had wanted to mention as another of the causes of our diminished popularity. As our programs, or as time passed and our programs got older, there was a parallel development, and I don't think that they're casually related. I think the development of a change in the nature of the civil rights movement and the development of the concept of confrontation on college campuses nationally, was a concurrent development that I think would have taken

place whether or not OEO ever existed, and independently of it. I am convinced personally that what is going on on American college campuses today would have gone on certainly without regard to a poverty program and would probably have come about even had there never been a civil rights movement. And I think some of the developments within the civil rights movement would have occurred both without the poverty program and without what's going on on the campuses.

But we happened to catch a lot of hell for both the other two! The relatively simple-minded people--columnists, newspaper reporters, editors, congressmen, senators, mayors, and governors--perceive of us as causing all that trouble out there. The fact of the matter is there would have been riots if we'd never been thought of. The civil rights movement was moving in a tougher direction within this liberalized movement; the problem of a civil rights leader maintaining his leadership and staying ahead of the activists in his own organization was already becoming apparent much earlier than in '64, and the increasing militancy and stridency of the problem was apparent earlier.

I think the lack of respect for authority, if you will, or lack of authority, in the minds of college kids is one of the factors that goes into what's going on campuses. I think it has been going on since before '46 when I went into college. It's been an on-going thing, really, since the '30's--the early '30's. I think it extends way back probably into the early '20's. I think Freud and Dewey and a lot of those people, the intellectual ferment and the questioning of the scientific method and the questioning of past authority, has had a lot to do with it. And the challenge of authority would have occurred

regardless in the intellectual community. And the challenge, I think, by the blacks and the Latins within our economic and social structure, political structure, would have occurred without regard to whether OEO was in existence also. It was just bound to come. The development of the mass media of the TV brought home to everybody out there the fact that the gulf between the whites and blacks is growing broader and deeper and blacker with every passing year. It was just inevitable that that was going to cause resentment on their part. And in fact of the matter is it is. It is growing blacker and deeper and wider.

There are some fairly basic problems. The racial problem is, I think, masking a much more pervasive problem that we're really not facing up to, and that is the fact that automation and technological changes, in spite of some of my economic professors, have made muscles obsolete, and increasingly they're obsolete. And today it happens to be the Negro that's at the bottom of the heap with only muscle power to operate. If we had been back at this point fifty years ago it would have been the Italians and the Poles, but it would have been the same problem. Fifty years before that it probably would have been the Irish. But the fact of the matter is as the years go by, my friends in the cybernetion and the automation and-- what's that other word they use--computerization tell me that within our lifetime we're going to be producing about 90 percent of the goods manufactured or produced in farming that we use with about five percent of the present working force. We are going to have problems, economic distribution problems, and we are going to have to find ways of occupying people and of deciding who's going to work and who's not

going to work. I think we're sort of fooling ourselves that this business of inability to find uses in society, to find uses for Negro muscle power, is just a racial thing. I just don't think it is. I think we've got a much more basic problem here that race is just sort of masking from our view, and poverty.

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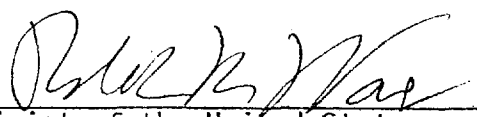
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